



PRELIMINARY DRAFT
No. 3067

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2012 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 31-9-2-67; IC 31-14-13; IC 31-17-2.

Synopsis: Joint legal custody. Establishes a rebuttable presumption that an award of joint legal custody is in the best interest of a child. Requires a court, if a party seeks to rebut the presumption, to consider: (1) the fitness and suitability of each of the persons awarded joint legal custody; (2) the ability of the parents to communicate and advance the child's welfare; and (3) whether the child has established a close and beneficial relationship with both of the persons awarded joint legal custody. Repeals certain provisions governing the award of joint legal custody that are being superseded by this bill.

Effective: July 1, 2012.



A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 31-9-2-67, AS AMENDED BY P.L.95-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 67. "Joint legal custody", for purposes of IC 31-14-13, IC 31-17-2-13, ~~IC 31-17-2-14~~, and IC 31-17-2-15, means that the persons awarded joint custody will share authority and responsibility for the major decisions concerning the child's upbringing, including the child's:

- (1) education;
- (2) health care; and
- (3) religious training.

However, the term does not include an award of physical custody of the child.

SECTION 2. IC 31-14-13-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. The court shall determine custody in accordance with the best interests of the child. **Except as provided in section 2.2 of this chapter**, in determining the child's best interests, there is not a presumption favoring either parent. The court shall consider all relevant factors, including the following:

- (1) The age and sex of the child.
- (2) The wishes of the child's parents.
- (3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
 - (A) the child's parents;
 - (B) the child's siblings; and
 - (C) any other person who may significantly affect the child's best interest.
- (5) The child's adjustment to home, school, and community.
- (6) The mental and physical health of all individuals involved.
- (7) Evidence of a pattern of domestic or family violence by either parent.



(8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 2.5(b) of this chapter.

SECTION 3. IC 31-14-13-2.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 2.2. There is a rebuttable presumption that an award of joint legal custody is in the best interest of the child.**

SECTION 4. IC 31-14-13-2.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 2.4. If a party seeks to rebut the presumption under section 2.2 of this chapter that an award of joint legal custody is in the best interest of the child, the court shall consider:**

- (1) the fitness and suitability of each of the persons who would be awarded joint legal custody;
- (2) whether the persons who would be awarded joint legal custody are able to communicate and cooperate in advancing the child's welfare; and
- (3) whether the child has established a close and beneficial relationship with both of the persons who would be awarded joint legal custody.

SECTION 5. IC 31-17-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 8.** The court shall determine custody and enter a custody order in accordance with the best interests of the child. **Except as provided in section 13 of this chapter,** in determining the best interests of the child there is no presumption favoring either parent. The court shall consider all relevant factors, including the following:

- (1) The age and sex of the child.
- (2) The wishes of the child's parent or parents.
- (3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
 - (A) the child's parent or parents;
 - (B) the child's sibling; and
 - (C) any other person who may significantly affect the child's best interests.
- (5) The child's adjustment to the child's:
 - (A) home;
 - (B) school; and
 - (C) community.
- (6) The mental and physical health of all individuals involved.
- (7) Evidence of a pattern of domestic or family violence by either parent.
- (8) Evidence that the child has been cared for by a de facto



custodian, and if the evidence is sufficient, the court shall consider the factors described in section 8.5(b) of this chapter.

SECTION 6. IC 31-17-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 13. ~~The court may award legal custody of a child jointly if the court finds that an award of joint legal custody would be~~ **There is a rebuttable presumption that an award of joint legal custody is** in the best interest of the child.

SECTION 7. IC 31-17-2-15, AS AMENDED BY P.L.3-2008, SECTION 237, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 15. ~~In determining whether an award of joint legal custody~~ **If a party seeks to rebut the presumption** under section 13 of this chapter ~~would be that an award of joint legal custody is~~ in the best interest of the child, the court shall consider: it a matter of primary, but not determinative, importance that the persons awarded joint custody have agreed to an award of joint legal custody. ~~The court shall also consider:~~

(1) the fitness and suitability of each of the persons **who would be awarded joint legal custody;**

(2) whether the persons **who would be awarded joint legal custody** are ~~willing and~~ able to communicate and cooperate in advancing the child's welfare; **and**

~~(3) the wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age;~~

~~(4) (3) whether the child has established a close and beneficial relationship with both of the persons who would be awarded joint legal custody.~~

~~(5) whether the persons awarded joint custody:~~

~~(A) live in close proximity to each other; and~~

~~(B) plan to continue to do so; and~~

~~(6) the nature of the physical and emotional environment in the home of each of the persons awarded joint custody.~~

SECTION 8. IC 31-17-2-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 17. (a) Except:

(1) as otherwise:

(A) agreed by the parties in writing at the time of the custody order; **or**

(B) provided in an order by the court; and

(2) as provided in subsection (b);

the custodian may determine the child's upbringing, including the child's education, health care, and religious training.

(b) If the court finds after motion by a noncustodial parent that, in the absence of a specific limitation of the custodian's authority, the child's:

(1) physical health would be endangered; or

(2) emotional development would be significantly impaired;

the court may specifically limit the custodian's authority.



1 SECTION 9. THE FOLLOWING ARE REPEALED [EFFECTIVE
2 JULY 1, 2012]: IC 31-14-13-2.3; IC 31-17-2-14.

